



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The Chappy Corporation

File: B-252757

Date: July 20, 1993

Philip M. Cronin, Esq., and Scott S. Spearing, Esq., Peabody & Arnold, for the protester.
Howard B. Rein, Esq., and Paul M. Fisher, Esq., Department of the Navy, for the agency.
David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Hand-carried bid delivered after bid opening by Federal Express properly was rejected as late where the bidder required that the carrier obtain a signed receipt before the bid could be delivered, thereby causing the carrier to decline to deliver the bid to the bid box in accordance with the solicitation instructions.

DECISION

The Chappy Corporation protests the rejection of its bid under invitation for bids (IFB) No. N62472-92-B-5043, issued by the Officer in Charge of Construction (OICC), Naval Facilities Engineering Command (NAVFAC), Naval Air Warfare Center, Warminster, Pennsylvania, for the repair of a runway at the Willow Grove Naval Air Station. The agency rejected the Chappy bid because it was submitted after bid opening. Chappy contends that the bid was delivered late due to improper government action.

We deny the protest.

Bids were to be submitted by 2 p.m. on February 23. The IFB instructed bidders to identify the solicitation number and time of bid opening. The IFB provided an address to which mailed bids were to be sent; it also identified the location of a bid box which was to be used for hand-carried bids. The IFB stated that hand-carried bids were to be deposited in the bid box marked "#1" and "OICC" located at column S-35 in the main entrance lobby of building 3 of the Naval Air

Warfare Center. Chappy's mailing label contained the address of the bid box; contrary to the IFB instructions, the solicitation number and the time of bid opening were not on the package.

According to Federal Express, as explained in a letter to the protester, its courier arrived at building 3 at 10:28 a.m. on February 23 to deliver Chappy's bid to the required bid box. Federal Express reports that its courier did not deposit Chappy's bid in the bid box, however, because, in accordance with the bidder's instructions, it was required to obtain a signed delivery receipt. Federal Express states that a person near the bid box, whom it does not identify, presumably the security clerk on duty in the lobby, would not provide its courier with a signed receipt for the bid. The courier returned at approximately 2:31 p.m. that afternoon and delivered the package to an office automation clerk in the OICC office in building 2. This clerk signed the delivery receipt.

Chappy argues that a timely delivery of its bid was not made because an employee of the agency wrongfully refused to accept the bid and advised Federal Express to return later.

The agency reports that security clerks stationed in the lobby of building 3 are employed by the Naval Air Warfare Center, not NAVFAC, and that the clerks are responsible for issuing passes to enter the building, not for supervising the submission of bids and signing receipts. The Navy points out that the IFB instructions for delivery of hand-carried bids to the bid box were explicit and did not in any way suggest that a person would be at the bid box to give receipts or that receipts would be provided for hand-delivered bids. Further, the agency points out that a receipt is not a requirement of commercial carrier delivery--the agency states that a sender using the services of Federal Express may permit that carrier to make deliveries without obtaining a signed receipt and that the airbill contains a section which provides for a sender's waiver of the signature requirement. Chappy did not waive the signature requirement.


In addition, the security clerk on duty on February 23 reports that the bid box is located across the lobby from her desk and that bidders and commercial carriers can deliver packages to the box without a security pass. She also states that she has no specific recollection of any conversation with a Federal Express courier on the day of the bid opening. She states that "I would not, however, have told any . . . delivery person to come back later, for there would have been no reason to do so."

A proposal delivered to an agency by Federal Express or other commercial carrier is considered to be hand-carried and, if it arrives late, can be considered if it is shown that some government impropriety during or after receipt at the government installation was the sole or paramount cause of the late arrival at the designated place. Weather Data Servs. Inc., B-238970. June 22, 1990, 90-1 CPD ¶ 582.

We do not believe that there was any improper action on the part of the government in this case. The IFB instructions explicitly stated that bids tendered by Federal Express or other commercial carriers would be considered hand-carried bids and were to be deposited in the appropriate bid box. The instructions did not obligate the government to provide any bidder or any commercial carrier with a receipt for the delivery of the bid or suggest that an OICC employee would be available to sign for bids that were to be deposited in the bid box. Federal Express was not prevented by any government action from depositing Chappy's bid in the bid box at 10:28 a.m. Rather, it was Chappy's requirement that Federal Express obtain a receipt before depositing the bid that directly led to the delivery delay.

Furthermore, assuming that NAVFAC would accept from Federal Express a bid delivered directly to the OICC offices in building 2, as it did later that afternoon, no reason has been presented as to why Federal Express waited until approximately 2:31 p.m., after the bid opening had taken place, to make delivery. We do note, in this connection, that Chappy's bid package did not contain notice of the time of bid opening.

In short, it is clear from the record that the late delivery of the protester's bid was due not to any improper government action, but to the various actions of the protester and its delivery agent, Federal Express. Accordingly, the protest is denied.


for James F. Hinchman
General Counsel